

## EX PARTE OR LATE FILED

Frank Stilwell

03-128

Ex Parte

**From:** Jeffrey Steinberg  
**Sent:** Monday, March 22, 2004 3:44 PM  
**To:** Gerald Vaughan, John Branscome, Frank  
**Subject:** FW: FCC PA Language

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Federal Communications Commission  
Office of the Secretary

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-----Original Message-----

**From:** Amos Loveday  
**Sent:** Monday, March 22, 2004 3:40 PM  
**To:** Jeffrey Steinberg  
**Subject:** FW: FCC PA Language

More on the matter - not surprising not much agreement on what was agreed to

-----Original Message-----

**From:** Clark, John F. - WDC [mailto:JFClark@perkinscoie.com]  
**Sent:** Monday, March 22, 2004 1:54 PM  
**To:** 'jfowler@achp.gov'  
**Cc:** Lannis Jenkins; John Nau; Roxann Neumann; Ted Sanderson; Nancy Schamu; Amos Loveday; Robert Howarth  
**Subject:** RE: FCC PA Language

Thank you John,

I have some concerns, however, with the language you propose. The main point regarding this issue that we discussed last Thursday was that under current procedures, SHPO determinations of eligibility for previously unrecognized historic properties in the course of a Section 106 consultations, often have no significance outside and after those consultations. In many if not most cases, these determinations of eligibility do not result in any permanent, useful, or accessible record, let alone a nomination to the National Register.

Therefore I came away from our meeting last Thursday with a slightly different understanding of our consensus on this point than that reflected in your language, although I recognize that we were not able to explore these concepts in great detail. I thought that we agreed that information about these determinations should be made a part of the SHPO inventory, whatever the nature of that inventory is in each office, but that at a minimum, the fact of SHPO determination of eligibility for that property would be recorded and maintained in an easily accessible manner for all future Section 106 reviews, not just for telecom projects. The idea was to allow each SHPO to deal with this information in the same way it deals with information about other properties that should be considered under Section 106, and therefore that should be made known to agencies and applicants.

For that reason, it would seem to be unnecessarily restrictive, and burdensome on both applicants and SHPOs, to specify in the NPA that the information would be made available only "upon request." In addition, Nancy's suggestion to use the FCC's database for this purpose would seem problematic, even if the FCC could or would do this, because it would make it difficult access for other federal agencies and non-telecom Section 106 applicants to obtain access to this information.

With these points in mind, would the following changes to your language work any better for you and Nancy?

D. Evaluation of Historic Significance

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3. The SHPO/THPO shall maintain in its inventory information pertaining to the location and National Register eligibility of identified historic properties and make such information available to the public in the same manner as it does information about other eligible properties in its inventory, except that

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information deemed confidential under the standards in 36 C.F.R. Section 800.11(c) shall not be made public.

Please let me know if you would like to discuss this further

Regards,

John

*John Clark*

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-----Original Message-----

**From:** John Fowler [mailto:jfowler@achp.gov]

**Sent:** Monday, March 22, 2004 12:24 PM

**To:** Robert Howarth

**Cc:** Lannis Jenkins; John Nau; Roxann Neumann; Ted Sanderson; Nancy Schamu; Clark, John F. - WDC; Amos J. Loveday Jr. (E-mail)

**Subject:** FCC PA Language

As requested, I have drafted a short provision to embody the idea that SHPO/THPOs retain the information relating to identification and evaluation of historic properties that applicants submit so that it can be used by future applicants. The provision would leave to the SHPO/THPO's discretion how the material is maintained and how an applicant accesses it. The language would be in a subsection added to "Section VII Procedures" (it probably should precede the existing "E"):

#### Retention of Information

The SHPO/THPO shall retain the information in the Submission Packet pertaining to the location and National Register eligibility of historic properties and make such information available to future Applicants upon request.

I spoke to Nancy Schamu of NCSHPO this morning about our discussion last Thursday and, in particular, this provision. She expressed concern about requiring SHPOs to retain these records. She noted that records retention laws vary from state to state and might impact this provision. She also was concerned about the burden placed on SHPOs to maintain these records. Nancy suggested that the FCC GIS data base for cell tower locations might be a more appropriate way to make the information accessible to future applicants. I think that is a logical suggestion that warrants investigation with the FCC. John